



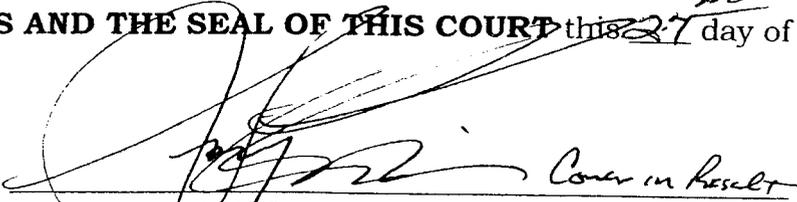
should be **GRANTED** based on the decision of a majority of the Court to apply *Anderson* to this type of case. The Court has the power to review the cases pending on appeal when *Anderson* was decided to determine if sentence modification is appropriate. Here, we cannot say jurors would have sentenced Appellant to thirty years had they known Appellant would serve at least 85% of the sentence they gave. We thus **MODIFY** Appellant's sentence to twenty (20), rather than thirty (30) years.

Regarding the second issue, the record indicates jurors were fully informed of Appellant's theory of defense, but rejected it. At sentencing they gave Appellant ten additional years than the statutory minimum, indicating an emphatic rejection of his story, which was rather farfetched. Under these circumstances and pursuant to this record, we see no possibility that jurors would have chosen to acquit Appellant of the greater offense of burglary and then convict Appellant of a lesser included misdemeanor. Appellant's cited authority does not change our decision regarding this issue.

It is so **ORDERED**.

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this <sup>27<sup>th</sup></sup> day of

August, 2007.

  
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**GARY L. LUMPKIN, Presiding Judge**

  
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**CHARLES A. JOHNSON, Vice Presiding Judge**

*Charles S. Chapel*

**CHARLES S. CHAPEL, Judge**

*Arlene Johnson*

**ARLENE JOHNSON, Judge**

*David B. Lewis*

**DAVID B. LEWIS, Judge**

ATTEST:

*[Signature]*

Clerk